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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 500

MAX EISENBERG, on behalf of himself and all other stockholders of Central Zone Property Corporation, similarly situated,

Petitioner,

against

CENTRAL ZONE PROPERTY CORPORATION,

Respondent,

and

JOSEPH COHEN,

Referee-Respondent,

and

S. H. SCHEUER, MILLARD SHRODER and WILLIAM C. RUTH,

Defendants.

AND ANOTHER ACTION

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

Respondent states, on page 4 of its memorandum in opposition, that the Appellate Division found "that petitioner

had not begun the actions in good faith" and that "it evaluated the services rendered * * * by petitioner and his appellate counsel * * * at $5,000.00."

Respondent is now agilely saying that the Appellate Division awarded compensation for petitioner's services, too, notwithstanding it found him guilty of bad faith. (There was, in fact, no such finding). This position ignores the following statement in the Appellate Division's opinion (Appendix A, pp. 19, 20): "In the instant case, however, counsel had been retained just prior to argument in the Court of Appeals. Because of the circumstance, the order * * * is modified by fixing compensation for legal services in the amount of $5,000.00 * * *".

No compensation for petitioner's services was awarded or contemplated by the Appellate Division.

With respect to respondent's contention that the United States Constitution does not guarantee that the decisions of the State courts shall be free from error, we submit that arbitrary and discriminatory rulings are specifically the type of error which the Constitution is designed to prevent. They are such departures from the accepted and usual course of judicial proceedings which warrant an exercise of this Court's power of supervision (Rule 19b).

As to respondent's contention that petitioner was specifically required to assert the rights in question under the federal Constitution, we submit that it is sufficient that the federal question was fairly presented by the record; that it was necessary to a determination of the cause; and that no adequate non-federal ground appears. Actual de-

cision of the federal question in terms by the State court is not required. *Chapman* v. *Goodnow's Adm'r.*, 123 U. S. 540, 548 (1887); *Dorchy* v. *Kansas*, 272 U. S. 306, 308, 309 (1926); *Bell's Gap R. Co.* v. *Commonwealth of Pa.*, 134 U. S. 232, 236 (1890).

Dated: October 22, 1957.

Respectfully submitted,

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